REMARKS

Claims 1-59 are pending in this application. Reconsideration and further prosecution of the above-identified application are respectfully requested in view of the RCE submitted herewith and in view of the amendments, and the discussion that follows. Claims 1, 3-11, 14, 15, 17-21, 23-50, 52, and 54-59 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,707,821 to Shaffer et al. ("Shaffer") in view of U.S. Patent No. 6,741,586 to Schuster et al. ("Schuster")and further in view of U.S. Pat. No. 7,046,643 to Zellner et al. ("Zellner"). Claims 2, 16, 22 and 51 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer in view of Schuster in view of Zellner and further in view of U.S. Pat. No. 6,904,037 to Oran et al. ("Oran"). Claim 12 has been rejected under 35 U.S.C. §103(a) as unpatentable over Shaffer, Schuster and Zellner further in view of Sampson (U.S. Pat. No. 6,081,720). Claims 13 and 53 have been rejected under 35 U.S.C. §103(a) as unpatentable over Shaffer, Schuster, and Zellner and further in view of Tran (U.S. Pat. No. 5,453,987). Claims 1, 12, 15, 20, 31, 36, 44, 56, 57, 58 and 59 have been amended. After a careful review of the specification and claims (as amended), it is believed that the claims are allowable and, therefore, Notice of Allowance is respectfully requested.

Claims 1, 3-11, 14, 15, 17-21 23-50, 52, and 54-59 have been rejected as being obvious over Shaffer in view of Schuster and Zellner. Independent claims 1, 15, 20, 31, 36, 44, 56, 57, 58 and 59 call for user selected, multiple

predetermined packet priority. The Office Action asserts that Zellner teaches user selected packet priority. However, Zellner describes a pricing method of assigning transaction priority for transmissions to allow pricing corresponding to the priority. Zellner does not describe user selection of priority levels for data packets rather Zellner priorities are assigned to transactions to allow different pricing for different levels of transmission priority were higher priority transactions are generally transmitted before lower priority transactions (Col. 2, lines 11-20; Col. 4, lines 5-7) during periods of congestion. The cited sections of Cols. 4, 5, 6 and 9 merely describe this transaction priority but does not describe data packet priorities. Thus, Zeller assigns priorities to applications or transactions not packets. (e.g. "a method for pricing . . . on a wireless network according to a transmission priority level that is designated for each transaction." Col. 7, lines 11-15; "priority levels are used by the access control manager 14 in the wireless network to determine the relative order of access to the wireless network for different applications during periods of congestion" Col. 4, lines 4-8). These transactions or applications can have different types of packets or no packets at all. Similarly, packets of the same type such as voice can have different priorities if in a different application or transaction. Thus, this, transaction level priority does not disclose packet level priority, nor is there any disclosure of interspersed packets. Further, the entire transaction is discontinued if a higher priority application is opened. (e.g. "…the access control manager discontinues the lower priority transaction in favor of a higher priority transmission"

Col. 6, lines 19-20). If a higher priority transaction asks for the communications channel, the entire lower priority transaction is simply discontinued. The Office Action asserts that in Zellner packets of different applications can be interspersed based upon priority levels. However, Zellner teaches discontinuing the lower priority transaction on a transaction basis not on a packet basis (i.e. "the access manager performs a series of operations in step 37, to discontinue the lower priority transaction . . . signal indicate to the handset transmitter/receiver that access to the wireless network is denied. "Col. 5, lines 41-48). Thus, the packets (or divided packets) cannot be interspersed.

Zellner's transaction level system while suitable to pricing on a transactions priority basis is not suitable for use in a packetized system where individual packets are divided and interspersed, as claimed. Thus, Zellner's pricing system does not suggest its use to prioritize packets for interspersed transmission of the packets. Further, since Zellner's transaction priority scheme would be unsuitable for the interspersed packet system of the claimed invention and deals with an entirely different problem, there is no suggestion to combine Zellner with Shaffer or Schuster.

Since Zellner assigns priority based upon transactions, the Zellner system does not teach or suggest the method step of (or have apparatus for) assigning . . . a user selected predetermined second priority level to data packets from a first data processing device of the plurality of data processing devices and a user selected third predetermined priority level to data packets from a second data processing device of the plurality of data

processing devices, or sending the packets based upon priority of each packet on a packet by packet basis.

Since neither Shaffer, Schuster, Zellner or Oran teach or suggest the above feature, the combination fails to teach each and every claim limitation. In addition, claim 15 has been amended to recite determination and transmission directly to a device (e.g. computer) coupled directly to the telephone without using the communication network (see p. 4, first para.), which is also not taught by the cited references. Since the combination fails to teach each and every claim limitation, the independent claims 1, 15, 20, 31, 36, 44, 56, 57, 58 and 59 are distinguishable over the cited references and are therefore believed to be allowable. All the remaining claims are dependent upon the allowable independent claims and are therefore also believed to be allowable.

With regard to claims 4 and 52, the Office Action has indicated that the dividing of data packets into random, non uniform size smaller packets is shown by Fig. 4 of Shaffer. However, Fig. 4 merely shows segmenting two data packets (DP1 & DP2 of Fig. 3) into eight smaller packets (Col. 2, lines 64-66) with a repeating pattern of 3 larger parts and one smaller part. There is no mention of randomness in Shaffer. The illustration of a single repeating pattern does not disclose the claimed randomly dividing data packets to obtain random, non-uniform size packets. The repeating pattern is patterned not random. Thus, Shaffer does not teach random segmenting, only a repeating predetermined pattern.

Allowance of claims 1-59, as now presented, is believed to be in order and such action is earnestly solicited. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to telephone applicant's undersigned attorney.

Respectfully submitted,

WELSH & KATZ, LTD.

By: _James A. Scheer_

James A. Scheer
Registration No. 29,434

August 31, 2007
120 South Riverside Plaza
22nd Floor
Chicago, Illinois 60606
(312) 655-1500